

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA S.C. 29211  
TELEPHONE 803-758-3970

January 24, 1985

The Honorable Larry D. Smith  
Sheriff, Spartanburg County  
Spartanburg, South Carolina 29301

Dear Sheriff Smith:

In a letter to this Office you questioned the effect of this State's Home Rule Act, Sections 4-9-10 et seq. of the Code, on the office of sheriff with respect to the employment and discharge of personnel employed in the sheriff's office.

As you are aware, the State Supreme Court in Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979), recognized that pursuant to Section 23-13-10 of the Code a deputy sheriff serves at the pleasure of the sheriff. The Court further indicated that particular statutes, namely, Sections 8-17-110, et seq. of the Code, which provide for a county and municipal grievance procedure generally, are inapplicable to individuals serving as deputy sheriffs.

Pursuant to Section 4-9-30(7) of the Code, county governments are authorized to

"... develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government but this authority shall not extend to any personnel employed in departments or agencies under the direction of an elected official... (Emphasis added.)

REQUEST LETTER

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In a previous opinion concerning another elected county official, a clerk of court, dated February 18, 1983, this Office determined that pursuant to the referenced code section, a county council does not have responsibility for the employment and discharge of county personnel within a clerk of court's office. Instead, "... the Clerk of Court has the power under the Home Rule Act to employ and discharge all personnel employed in the Office of the Clerk of Court." However, the opinion further stated that the personnel employed by the clerk "... would ... be subject to general 'personnel system policies and procedures for county employees by which all county employees are regulated.'" The opinion emphasized further that the referenced authority for a county to develop personnel system policies and procedures could not be construed in any manner to infringe upon the authority of an elected county official to make any decision regarding the employment and discharge of personnel in the elected official's office.

The conclusions of the referenced opinion would similarly be applicable to personnel in a county sheriff's office since a sheriff is an elected county official. Therefore, consistent with Section 4-9-30(7), a sheriff has absolute authority regarding the employment and discharge of personnel employed within his department. <sup>1/</sup> However, such personnel would be subject to "general personnel system policies and procedures" of the county. Therefore, as to the questions raised in your letter, the county anti-nepotism ordinance which you referenced would be inapplicable to any employment decisions made by you as to your department. This Office has consistently determined that the State anti-nepotism statute, Section 8-5-107 of the Code, does not apply to counties and municipalities. See: Op. Atty. Gen. dated September 11, 1979.

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<sup>1/</sup> Generally, however, for any personnel positions within the sheriff's office other than deputy sheriff, such personnel would be entitled to the benefits of the employee grievance procedure established by Section 4-9-30(7). Such provision states in part that:

"(a)ny employee discharged by... (an)  
... elected official ... shall be  
granted a public hearing before the  
entire county council if he submits  
a request in writing..."

I would caution that one opinion of this Office dated September 2, 1981 has viewed the Rhodes decision as possibly indicating that a sheriff has complete discretion as to all matters affecting employees of a sheriff's department and that such discretion is unaffected by the Home Rule Act. However, a close reading of Rhodes does not appear to address the application of the Home Rule Act.

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As to your question concerning whether county personnel should handle all applications for employment within your department, it appears that such activity would be within the subject of "general personnel system policies and procedures" regulating county employees generally. Therefore, the county should handle any such applications.

If there are any further questions, please advise.

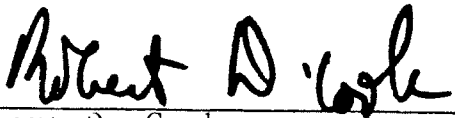
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:ymk

REVIEWD AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions